

OFFICE OF THE DIRECTOR
DEPARTMENT OF MOTOR VEHICLES
P.O. BOX 932328
SACRAMENTO, CA 94232-3280



TITLE 13: DEPARTMENT OF MOTOR VEHICLES

NOTICE IS HEREBY GIVEN

The Department of Motor Vehicles (department) proposes to amend Sections 26.01 and 26.02 in Article 2.1, Chapter 1, Division 1, Title 13 of the California Code of Regulations, relating to commercial driver's licenses and commercial learner's permits.

PUBLIC HEARING

A public hearing regarding this proposed regulatory action is not scheduled. However, a public hearing will be held if any interested person or his or her duly authorized representative requests a public hearing to be held relevant to the proposed action by submitting a written request to the contact person identified in this notice no later than 5:00 p.m., fifteen (15) days prior to the close of the written comment period.

DEADLINE FOR WRITTEN COMMENTS

Any interested party or his or her duly authorized representative may submit written comments relevant to the proposed regulations to the contact person identified in this notice. All written comments must be received at the department no later than 5:00 p.m., **September 4, 2017**, the final day of the written comment period, in order for them to be considered by the department before it adopts the proposed regulation.

AUTHORITY AND REFERENCE

The department proposes to adopt these regulations under the authority granted by Vehicle Code section 1651 and 15250, in order to implement, interpret, or make specific Vehicle Code sections 12505, 12809, 15250 and Sections 383.71 and 383.73 in Title 49, Code of Federal Regulations.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Vehicle Code section 15250 incorporates and adopts the federal commercial driver's license standards and issuance requirements for California. Among the federal standards is Section 383.73 in Title 49, Code of Federal Regulations (CFR), which requires an applicant for any commercial driver's license, including a commercial learner's permit, to provide proof to the issuing authority of his or her United States citizenship or proof of lawful permanent residency, and proof that he or she has residency in the issuing State. The federal regulation identifies the documents that are acceptable for establishing an applicant's U.S. citizenship, lawful permanent residency, or non-domiciled commercial license or permit holders, and identifies the type of documents a state should require to establish the state residency requirement.

On October 7, 2016, the department published the Notice of Proposed Action, setting forth the proposed adoption of Sections 26.01 and 26.02 in Article 2.1. The adoption of Section 26.01 prohibits the department from issuing a commercial driver's license without proof of the applicant's U.S. citizenship or lawful permanent residency, and proof of the applicant's

California residency being presented to the department. The adoption of Section 26.02 addresses the submission of citizenship and residency documents at the time of renewal, transfer, or upgrade of a commercial driver's license or a commercial learner's permit.

During the 45-day comment period, which ended on November 21, 2016, the department received no comments related to the proposed adoptions. The department submitted the final rulemaking action to the Office of Administrative Law on January 6, 2017. The action was approved on February 21, 2017 with an effective date of April 1, 2017.

In the weeks since this action has been approved, the department has received notice from interested parties that the adopted regulations fail to address commercial driver's license holders that rely on an employment authorization document (EAD) or a form I-94 Arrival/Departure Record to meet the commercial driver's license legal presence requirement. The department adopted emergency regulations, effective on April 19, 2017, that ensure applicants with an EAD or I-94 will be able to use those documents during the application process.

This proposed action will ensure the provisions adopted in the emergency action will become permanent and allow commercial drivers to continue to apply for and renew their commercial driver's licenses with documents already available to them.

Problems This Proposed Regulation Intends To Address

The department has identified nearly 49,000 commercial driver's license holders potentially at risk of losing their license because they have no qualifying legal presence documents. Those commercial driver's license holders who lose their commercial driver's license will likely lose their employment, resulting in serious harm to a large group of individuals.

Benefits Anticipated From This Proposed Action

The department anticipates this action will allow the affected commercial driver's license holders to maintain their commercial driver's licenses and maintain employment.

CONSISTENCY AND COMPATIBILITY WITH STATE REGULATIONS

During the process of developing these regulations, the department has conducted a search of any similar regulations on the topic of commercial driver's licenses and has concluded that these regulations are neither inconsistent nor incompatible with existing state regulations.

COMPARABLE FEDERAL STATUTES OR REGULATIONS

Part 383 of Title 47, CFR contains the commercial driver's license standards, including the requirements for establishing an applicant's U.S. citizenship or lawful permanent residency, and state residency. Those standards allow states to determine the specific documents accepted by the license issuing agency. These proposals are comparable to the federal requirements but not identical. These proposals only have non-substantial deviations from the federal standards.

DOCUMENTS INCORPORATED BY REFERENCE

There are no documents incorporated by reference.

Economic and Fiscal Impact Determinations

The department has made the following initial determinations concerning the proposed regulatory action:

- *Cost or Savings to Any State Agency:* None.
- *Other Non-Discretionary Cost or Savings to Local Agencies:* None.
- *Costs or Savings in Federal Funding to the State:* None.
- *Cost to any local agency or school district requiring reimbursement pursuant to Gov. Code section 17500 et seq.:* None.
- *Effects on Housing Costs:* None.
- *Impacts Directly Affecting Businesses:* This action proposes to fix a problem that will indirectly impacts business. If a driver, who is employed by a business, is not able to provide sufficient proof of legal presence, that driver will be unable to maintain his or her commercial driver's license. A driver's failure to maintain a commercial driver's license will likely mean that he or she is no longer able to drive as part of his or her employment, which may impact the business. However, the department does not anticipate a significant impact to these businesses as there is a relatively low number of current commercial driver's license holders that would be affected while the department advances through the regulatory process.
- *Cost Impact on Representative Private Persons or Businesses:* This action does not impose any costs on private persons or businesses. As explained above, this action may indirectly impacts business if a driver, who is employed by a business, is not able to provide sufficient proof of legal presence, resulting in the loss of his or her commercial driver's license. While the business and affected private person may be impacted by the loss of employment, this action does not impose any costs that would contribute to that loss.
- *Small Business Impact:* This proposed action may impact small business that employ commercial driver's license holders to transport goods or services. The department does not anticipate a significant impact to these small businesses as there is a relatively low number of current commercial driver's license holders that would be affected while the department advances through the regulatory process.

Results of the Economic Impact Statement

The department has made the following determinations related to this proposed regulatory action:

This proposed action will not only create jobs within California, but also intends to fix a problem that may lead to the elimination of jobs in California. If a commercial driver is not able to provide sufficient proof of legal presence, that driver will be unable to maintain his or her commercial driver's license.

This action is not likely to create or eliminate businesses within California or expand businesses currently doing business in California. While it is possible that there may be some commercial driver's that suffer the loss of their commercial driver's license, the department does not anticipate a significant impact to businesses. Also, because this action only identifies legal presence documents that an applicant can use when applying for a commercial driver's license or commercial learner's permit, the provisions are not likely to lead to the expansion of businesses currently doing businesses.

This action is unlikely to impact the welfare or health of California residents, worker safety or the environment. Requiring a commercial driver's license applicant to provide specific documents as proof of legal presence may reduce instances of fraud and ensure that only qualified drivers are issued commercial driver's license, thereby ensuring the safety of the public.

PUBLIC DISCUSSION OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code section 11346.45, is not required because the issues addressed in the proposal are not so complex or large in number that they cannot easily be reviewed during the comment period.

ALTERNATIVES CONSIDERED

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, or would be effective as and less burdensome to affected private persons than the proposed action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law.

CONTACT PERSON

Any inquiries or comments concerning the proposed rulemaking action may be addressed to:

Randi Calkins, Regulations Analyst
Department of Motor Vehicles
Legal Affairs Division
PO Box 932382, MS C-244

Sacramento, CA 94232-3820

Any inquiries or comments concerning the proposed rulemaking action requiring more immediate response may use:

Telephone: (916) 657-8898

Facsimile: (916) 657-6243

E-Mail: LADRegulations@dmv.ca.gov

In the event the contact person is unavailable, inquiries should be directed to the following back-up person:

Shelly Johnson Marker, Chief of Staff

Department of Motor Vehicles

Telephone: (916) 657-6469

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The department has prepared an Initial Statement of Reasons for the proposed regulatory action, and has available all the information upon which the proposal is based. The contact person identified in this notice shall make available to the public upon request the Express Terms of the proposed regulatory action using underline or italics to indicate additions to, and strikeout to indicate deletions from the California Code of Regulations.

The contact person identified in this notice shall also make available to the public, upon request, the Final Statement of Reasons and the location of public records, including reports, documentation and other materials related to the proposed action. In addition, the above-cited materials (the Notice of Proposed Regulatory Action, the Initial Statement of Reasons, and Express Terms) may be accessed at <http://www.dmv.ca.gov/portal/dmv/detail/about/lad/regactions>.

AVAILABILITY OF MODIFIED TEXT

Following the written comment period, and the hearing if one is held, the department may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the fully modified text, with changes clearly indicated, shall be made available to the public for at least 15 days prior to the date on which the department adopts the resulting regulations. Request for copies of any modified regulations should be addressed to the department contact person identified in this notice. The department will accept written comments on the modified regulations for 15 days after the date on which they are first made available to the public.